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TELTRUST

September 14, 1994

Via Hand Delivery

William Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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SEP 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Reply Comments of Teltrust Inc.
in CC Docket No. 92-77

Dear Mr. Caton

Enclosed are an original and ten copies of the Reply Comments of Teltrust, Inc. in the referenced proceeding, submitted herewith for filing and distribution to each of the Commissioners. Once accepted for filing, please date stamp one of the copies and return it to the messenger from our office.

Please address any questions or comments to the undersigned counsel.

Very truly yours,

Steven E. Swenson
Attorney for Teltrust, Inc.

Enclosures
cc: All Commissioners (w/encl.)

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List A B C D E

Teltrust, Inc.
221 North Charles Lindbergh Drive
Salt Lake City, Utah 84116
(801) 535-2000
Fax (801) 535-2080

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Billed Party Preference	)	CC Docket No. 92-77
for 0+ InterLATA Calls	)	

REPLY COMMENTS

Teltrust, Inc., Teltrust Communications Services, Inc. and Teltrust Phones, Inc. ("Teltrust"),[1] by their undersigned counsel, hereby submit reply comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") seeking additional comment on the above referenced billed party preference ("BPP") proceeding.[2] The Commission tentatively concludes in the Further Notice that the benefits of BPP outweigh its significant costs. The updated record does not support this conclusion. Updated comments have brought forth even more convincing evidence that BPP will be tremendously expensive to implement -- far more costly than estimated by the Commission in it's Further Notice. The record now shows BPP is unnecessary to achieve consumer convenience; consumers easily and willingly utilize access codes to reach the carrier of their

[1] Teltrust Inc. is a diversified telecommunications company serving the specialized telephone communications needs of clients around the world. Teltrust Communications Services, Inc. is a true integrated service bureau offering operator, switching, network, calling card and other teleservices to the independent payphone industry, IXCs, Competitive Access Providers and other aggregators. Teltrust Phones, Inc. operates approximately 1500 payphones in five western states. Teltrust filed Joint Comments in this proceeding with Cleartel Communications, Inc., Com Systems Inc. and International Pacific, Inc. Due to the importance of this decision to Teltrust's continued growth, Teltrust has decided to file independent comments.

[2] Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 94-117 (released June 6, 1994).

choice. Most importantly, several commenters agree that the central objective of the Commission -- lowering OSP rates -- is achievable through significantly less costly means.

Considering the overwhelming opposition to BPP, it would, we believe, stretch the imagination for the Commission to now conclude BPP's benefits outweighed its costs. Given the number of parties opposed and the breadth of data derived from the updated record, BPPs implementation at this time would be contrary to the public interest and arbitrary and capricious. Teltrust, therefore, urges the Commission to end this proceeding immediately and implement the alternative solutions advanced by Teltrust and many others i.e implementation of fair rate regulation coupled with an effective enforcement program and a commitment from the Commission to address marketplace inequities which drive up small OSPs costs and favor the dominant carriers.

I. THE MAJORITY OF PARTIES FILING COMMENTS OPPOSE BPP AND FAVOR AND LESS COSTLY ALTERNATIVES.

Over eighty percent of the parties filing comments oppose BPP. Opponents have focused on four key issues: (i) The Commission's estimated cost of implementing BPP was based on stale data, is significantly understated and incomplete; (ii) the Commission significantly overstated the benefits of BPP; (iii) BPP is tremendously anticompetitive and will reduce OSP competition and destroy jobs; and (iv) the Commission has alternatives at hand that can be implemented at much lower cost. For these reasons and others, Bell Atlantic, Southern New England Telephone Company and US West have reexamined their position on BPP -- they now oppose BPP. They now join the broad cross section of other opponents that includes the largest IXCs, RBOCs, LECs, OSPs, aggregators, industry associations and state public utility commissions.

A. Implementing A Rate Ceiling or Benchmark Is A Widely Supported Alternative to Achieve Key Benefits of BPP.

As an alternative to BPP, many commenters support implementation of some form of regulations o OSP rates. More than half of the sixteen small OSPs who filed comments, as well as RBOCs, IXCs, industry associations and state public utility commissions, support rate regulation of OSPs -- variously described by commenters as rate ceilings, benchmark rate regulation, a range of rates presumed fair and reasonable and a rate safe harbor.[3] Teltrust concurs with the opinion of the Intellicall Companies -- the issue of excessive OSP rates is, in fact, the most significant issue driving the implementation of BPP. But in attempting to bring down rates and lessen complaints at what amounts to a very, very small percentage of IPP and aggregator locations, the Commission proposes to mandate a billion dollar solution that will, without doubt, increase rates on all interLATA operator assisted calls at all aggregator locations.[4] The Commission can surely implement the less costly alternative at its disposal in order to achieve certain of its objectives.

In it's Comments, Teltrust proposed that the Commission establish a fair ceiling on OSP rates and replicate, if possible, the enforcement program currently working in California. We perceive several advantages to establishing a rate ceiling or benchmark. First, the Commission's goal of lowering rates would be achieved: with a rate ceiling the highest priced OSP would adjust their rates downward, saving consumers money and diminishing the frequency of consumer complaints. Other significant benefits would result from implementation of a fair rate ceiling. Implementing a rate ceiling

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[3] See Comments of Teltrust, U.S. Long Distance, Inc., Teleport Communications Group, Operator Services, Company, Interlink Telecommunications, Inc. ConQuest Operator Services Corp., Cleartel Communications, Call America and American Network Exchange.

[4] Comments of Cleartel Communications, Inc., Com Systems, Inc. International Pacific, Inc and Teltrust Communications Services, Inc. at 11-12.

in place of BPP would enable many thriving small businesses like Teltrust to continue to compete in the marketplace. BPP's implementation, on the other hand, would undoubtedly devastate small OSPs, as well as IPPs and other equipment manufacturing companies. Moreover, a fair rate ceiling, coupled with effective enforcement, would actually enhance competition in the OSP marketplace, provided that the Commission remedy, as suggested below, the market and regulatory inequities which drive up small OSPs operating costs. The many OSPs making a good faith attempt to keep their rates fair and reasonable would no longer be faced with the now common dilemma: do we keep rates low or inch rates upward in order to compete with the OSPs who charge very high rates, and who are able, as a result, to secure presubscription contracts by offering higher commission payments. Finally, establishing a benchmark or rate ceiling would force OSPs to either upgrade and streamline their networks and reign in their operating costs or go out of business.

The many parties advocating such a rate ceiling or benchmark approach all agree the Commission has clear authority to regulate OSP rates. TOSCIA provides the Commission a mechanism to regulate OSP rates.[5] TOSCIA specifies that if the Commission's rate review does not indicate that market forces are serving to assure that OSP rates and charges are just and reasonable, the Commission shall establish regulations to provide such assurance and that "such regulations shall include limitation on the amount of commission or any other compensation given to aggregators by providers of operator services."[6]

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5 47 U.S.C. Sec. 226 (h) (4) (A)

6 1990 Telephone Operator Services Consumer Improvement Act, 47 U.S.C. Section 226 (h)(4)(A).

B. The Commission Must Consider the Environment In Which Small OSPs Compete.

Teltrust reiterates that, in determining a fair rate ceiling or benchmark, the Commission must consider the competitive environment in which small OSP/IXCs operate, including the differences between small OSP/IXCs vis a vis the dominant carriers, and address the tremendous market inequities which drive up the costs of small OSP/IXC. First, as we noted in our Comments, small OSP/IXCs like Teltrust are financially and structurally very different from the dominant carriers. The OSP business is highly capital intensive; small OSP/IXCs cannot rollout multiple products, but must instead narrow their strategic focus on a single market and with a few niche products. The Big 4 IXCs can average many capital costs over a very diverse investment, revenue and product base. Yet small OSP/IXCs must earn a return on the margin of a few products; products aimed at certain narrow niche market segments and designed to enhance consumer services available from public communications equipment. Such narrow product and services focus has been the reason for the success of Teltrust and has indeed fostered enhanced competition and ultimately benefited the consumers. Nevertheless, this advantage is also a disadvantage vis a vis the dominant carriers, as small OSP/IXCs simply cannot average capital costs as is available to the dominant carriers.

Further, in establishing a rate ceiling or benchmarks, the Commission must consider the marketplace and regulatory difficulties faced by small OSP/IXCs. Primarily, small OSP/IXCs face divergent and anticompetitive state regulation and the inability to obtain billing and collection services from LECs at nondiscriminatory terms. Most importantly, the OSPs must now grapple with the advantage AT&T now enjoys over small OSPs in competing for presubscription agreements because of their proprietary CIID calling cards. We address these issues further in Section F below. Teltrust suggests, in short, that little or no relationship exists between much of the cost structures for the Big 4 IXCs and that of small OSP/IXCs like Teltrust. The Commission must take into account these varying costing methodologies, the differing product and market focus of the different tiers of carriers and the market inequities identified above when establishing a fair rate ceiling.

C. The Commission Must Consider The Difficult Environment In Which Independent Payphone Providers Compete.

In arriving at a fair rate ceiling or benchmark, the Commission must likewise take into account the competitive environment in which IPPs and aggregators must operate. IPPs need the income derived from 0+/- interstate traffic from their locations in order to survive and compete with the LECs. Yet IPPs also face numerous market inequities. IPP face anticompetitive and sometimes oppressive state regulatory schemes and high and sometimes exorbitant line charges. Further, IPPs are required to provide calls from their equipment for which they are either uncompensated or insufficiently compensated. With the emergence of viable local competition and more adequate dial around compensation, IPPs operating cost will ultimately come down. But until such time, IPPs must be able to derive a fair return on the 0+ interstate traffic from their phones.

D. Rate Ceilings or Benchmarks Must Be Effectively Enforced.

An enforcement program with real teeth is crucial to the Commission's regulation of OSP rates. As we noted earlier, regulation of OSP rates will have real benefits, but only if the enforcement program works. TOSCIA itself may serve as the basis for such enforcement as it requires OSPs to file informational tariffs specifying terms and rates. Many parties advocating a rate ceiling suggest the Commission build into this approach a mechanism whereby an OSP may exceed the rate ceiling or benchmark provided the OSP can justify higher rates. We also believe some flexibility is necessary in light of current market conditions faced by small OSPs. However, to lessen the administrative burden which may result from such an approach, Teltrust suggests the Commission establish a heavy burden for OSPs to meet in order to justify rates which exceed the rate ceiling or benchmark.

Teltrust suggested in its Comments that the Commission explore an alternative enforcement mechanism which might lessen the administrative burden imposed on Commission staff while also assuring compliance. The California rate enforcement program may be replicated industry-wide. In their comments, the American Public Communications Council ("APCC") also advances this program as a workable alternative. In order to enforce a rate ceiling on intrastate calls instituted by the Public Utilities Commission of the State of California, Pacific Bell has developed an editing capability to scan billing records originating from all payphones which have been submitted to Pacific Bell for billing and collection. Calls with a rate in excess of the established ceiling are returned to the billing customer indicating the reason for rejection. Returned billing records can be repriced by the billing entity and resubmitted to Pacific Bell for billing.[7] Teltrust believes that with the cooperation of the Commission and the APCC, a solution like that described above may be implemented to the benefit of consumers.

E. In Addition To Implementing Benchmarks, the Commission Must Help Level the Playing Field Between Small OSPs and Dominant Carriers.

Teltrust maintains implementation of a rate ceiling or benchmark will benefits consumers and enhance competition in the OSP marketplace. However, should the Commission regulated OSP rates in place of BPP, it will become critical that the Commission also identify and remedy the market inequities faced by OSPs. We urge the Commission to eliminate anticompetitive regulations which

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[7] See Investigation Instituted on the Commission's Own Motion into the Operations, Practices and Regulation of Coin and Coinless Customer-Owned Pay Telephone Service, Decision 90-06-018, adopted June 6, 1990; Pacific Bell Advise Letter No. 15824, approved November 1, 1990.

favor dominant carriers and reexamine the unfair advantage created by AT&Ts distribution of its proprietary CIID calling cards. This, in conjunction with a rate ceiling or benchmark, will allow small OSP/IXCs like Teltrust to lower their operating costs, while also keeping their rates competitive. First, we join other small OSPs in urging the Commission to remedy the discrimination experienced by OSPs in the pricing of billing and collection services by LECs.[8] Teltrust urges the Commission to require all LECs to provide nondiscriminatory billing and collection services to smaller OSPs and to price such services on a nondiscriminatory basis. Currently, OSPs must enter billing and collection arrangements with billing companies, thus adding "middle-men" costs to the billing and collection process.

Second, we concur with the other small OSPs who advocate that the Commission restrict use of AT&Ts proprietary CIID calling card to access code calling, or alternatively, to require nondiscriminatory validation of its CIID calling card by all carriers. The Commission has repeatedly acknowledged AT&T's advantages in the OSP marketplace and argued BPP would help eliminate some of these advantages. We support the Commissions goal of eliminating AT&Ts unfair advantages, but we recommend different mean of achieving it. Unquestionably, AT&T enjoys significant advantages over competitor OSPs as a result of its large customer base and its wide distribution of proprietary CIID calling cards. AT&T has moved its significant customer base to its CIID calling cards that other OSPs cannot validate. As a result, the disparity between the relative amounts of commissionable traffic that AT&T can handle has grown significantly; IPPs and aggregators, therefore, face growing incentives to presubscribe their phones to AT&T. In short, AT&T can pay lower commissions while still promising IPPs and aggregators much higher total

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8 See Comments of Capital Network System, Inc. at 25-31.

commission income since AT&T is able to complete more commissionable calls than its OSP competitors.

The Commission's assessment in this proceeding of AT&Ts advantages in the OSP marketplace is absolutely accurate. However, the Commission may not be aware of the damaging impact the CIID calling card is having on competition in the OSP marketplace. In California, for example, Teltrust has been one of the most successful small OSPs serving the IPP market. For three years Teltrust has increased market share vis a vis AT&T and other small OSPs due to its very fair rates and excellent customer and reporting services. However, since the Commission's decision in Billed Party Preference for 0+ InterLATA Calls, Report and Order and Request for Supplemental Comment, CC Docket No. 92-77, Phase I, 7 FCC Rcd 7714 (1992) ("Phase I"), AT&T has aggressively exploited their CIID calling card advantage. This advantages is magnified in California by two factors: a large number calls are intraState calls and rates for such calls are capped. Absent AT&T's CIID calling card advantage, Teltrust was still able to effectively compete in this market. However, with the CIID calling card, Teltrust has begun losing marketshare to AT&T. Clients who have defected to AT&T have all stated that while, in their view, Teltrust's services are superior to AT&Ts, they have no choice but to consider the bottom-line -- AT&T can pay higher overall commissions. Thus, without the CIID calling card, Teltrust and other small OSPs can compete in this market based on unique and specialized services; with the CIID calling card, Teltrust and others are losing market share.

Teltrust, therefore, wholeheartedly endorses the ideas proposed by other small IXC/OSPs in this regard. Teltrust urges the Commission to reconsider its Phase I decision and restrict use of

AT&T's CIID calling card to access code calling, or alternatively, require that AT&T provide all other OSP's with nondiscriminatory access to the validation information necessary to complete calls made using CIID calling cards Like other OSP commenters, Teltrust receives many calls every day from callers using AT&Ts CIID calling cards. Because we are unable to validate these calls, Teltrust and other OSPs alienate many callers. AT&Ts CIID calling card gives AT&T a tremendous advantage in the OSP marketplace -- it is now a central component in AT&Ts marketing efforts to IPPs and Aggregators. This advantage coupled with AT&Ts already dominant market position and name recognition will place small IXC/OSPs like Teltrust at an insurmountable disadvantage if the Commission implements a rate ceiling or benchmark.

For the foregoing reasons, Teltrust urges the Commission to terminate this proceeding and implement, as soon as possible, the alternative solutions proposed herein.

Respectfully submitted,

Steven E. Swenson

Counsel for Teltrust

September 14, 1994